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EXAMINER

JANVIER, JEAN D

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/375,005	Applicant(s) SUGAHARA, YASUO	
	Examiner Jean Janvier	Art Unit 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8,23,24,30-32 and 35-37 is/are pending in the application.
 4a) Of the above claim(s) 31-32 and 35-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8,23,24 and 30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

Response to Applicant's Amendments

First, newly submitted claim 37 is directed to a new and different invention or a method of, inter alia, identifying a product for promotion based on purchase tendencies **and providing a promotion having a first sentence related to the product to a first customer and a second sentence related to the same product to a second customer, where said first sentence and said second sentence identify different characteristics of the product.**

Since Applicant has received an action on the merits for the originally presented invention (claims 1-8, 24 and 30), **this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, new claims 37 is being withdrawn from consideration** as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. Of course, a complete action on all claims to the elected invention should be given. Note that the above practice is intended to have no effect on the practice stated in MPEP § 2303.

Response to Applicant's Arguments

In general, the claims are very broad in nature and the new claim amendments do not bring any clarity to the claim language. For example, in claim 1, the Applicant simply replaces “product descriptions” with “product statements”, which literally mean the same thing.

Applicant argues that **Jermyn is limited to group-based incentives where customers/households who are determined to have loyalty to a particular brand are provided with the same purchasing incentives. Further, Applicant states that**

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Jermyn, in col. 7: 42-51, discusses targeting consumer household with a different level of purchase incentive by providing a continuity reward to loyal purchasers and providing free samples to customers new to the product. However, the same level of incentive is provided to all customers or households that are loyal to a particular brand. However, the Examiner respectfully disagrees with the Applicant's conclusion. Indeed, Jermyn teaches, inter alia, a system wherein a host computer includes processing means for scanning (searching) the cumulative database to select consumer households (consumers) that have purchased products falling within defined product categories, means for profiling each selected consumer household (consumer) in terms of brand loyalty with respect to a promoted brand (promoted), means for generating incentives, associated with the same promoted brand (product), that differ based on the consumer household profile (simply consumer profile since only the consumer whose purchase history is recorded therein is being targeted here, but not the other members of the household), and means for printing the incentives for mailing to the selected consumer households (identified or targeted consumers). More specifically, the processing means within the host computer further includes means for merging with the generated incentives other textual and pictorial material that further enhances the customized purchase incentives (col. 1: 66 to col. 2: 25).

Moreover, before printing and mailing of the incentive packages (block 92 of fig. 3), other mailing materials are merged with the incentives, as indicated in block 90. Ideally, these include descriptive text, photographic and other materials, combined into an attractive magazine format that highlights the theme (product description describing the promoted brand (product)) and presents the printed purchase incentives (coupons), having imprinted thereon the product description, to the targeted consumers. Typically,

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the incentive packages are designed for seasonable presentation, such as for summer food selections, holiday food selections, back-to-school supplies, and so forth. It should be understood here that individual product description (introductory sentence), related to the same promoted brand (product), is displayed on each customized purchase incentive or coupon provided to each targeted consumer from a plurality of targeted consumers targeted by the current promotion. In other words, the product description or text imprinted on a targeted consumer's customized purchase incentive includes, among other things, a unique coupon value such that a loyal consumer receives a modest discount to ensure continued brand loyalty, while providing a greater discount to encourage consumers using another competitor's brand to switch to the promoted brand (product). To this end, printing different coupon discount values on the coupons, based on whether or not a consumer is loyal to the promoted brand or loyal to a competitor's brand (product), by itself renders the product description unique. Hence, the printed product description, including the different discount coupon values, is said to be unique or customized for each individually targeted consumer, as one skilled in the art would have concluded (col. 7: 66 to col. 8: 8; col. 2: 65 to col. 3: 4).

Here, "targeting groups of consumers (or consumer households) based on their purchase history" simply means targeting a plurality of consumers based on their profile or purchase history. Additionally, Jermyn never mentions any specific criteria for grouping, clustering, categorizing, segmenting or classifying consumers (putting consumers into specific grouping). Needless to say that the term "group" (consumer household) is loosely used here. In other words, although Jermyn recites identifying and targeting consumer households, however, it is the individual consumers that are being

identified during transactions at checkouts and their purchases are recorded in a database and thus, the targeting is done based on the individual consumer.

In fact, Jermyn explicitly discloses targeting one or more individual customers by sending the one or more individual customers an individually or uniquely generated incentive, such as a customized coupon, related to a promoted product (product brand or product category) based on the one or more customers' profile or purchase history (indicating the tendency of the one or more customers to purchase/use a particular item or product brand), wherein each individual incentive has a unique statement or (product) description imprinted thereon.

In short, contrary to the Applicant's findings, Jermyn teaches a method comprising the steps of identifying items (suitable to be replaced) purchased by a plurality of consumers at a checkout, identifying individual consumers presenting items for purchase, recording sales transactions in a global consumer purchase database in association with the individual consumers who made them, selecting a product category (a product brand) for promotion, scanning (searching) the said database to select individual consumers who have purchased items related to the promoted product category (product brand), customizing or individualizing a purchase incentive, related to a promoted product in the promoted product category (product brand), for each selected consumer based on the selected consumer's profile read from the consumer's purchase history (indicating the selected consumer's tendency to consume or purchase a particular item or product brand) and distributing the customized incentives to the individual consumers. The method

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further comprising, before printing and mailing/distributing the individualized incentives, the final step of merging other materials with the individualized incentives, wherein these materials include descriptive text, photographic and other materials combined into an attractive magazine format highlighting the theme of the promoted product (product brand) (each individual consumer from a plurality of consumers receives an individual incentive, related to the same promoted product or product brand, having imprinted thereon unique promotional theme or product description or statement corresponding to the promoted product or product brand) (fig. 3; col. 2: 37 to col. 3: 11; col. 7: 66 to col. 8: 8).

Second, regarding the 103 rejection, the Examiner has already addressed the related arguments in previous responses. In general, Deaton discloses mailing/distributing customized/individualized incentives, related to a particular promoted product or product brand, to individual customers based on the customers' purchase history, which indicates the customers' tendency to consume a particular item related to the promoted product or product brand (col. 71: 31-67; col. 72: 35-43). Jermyn also supports similar disclosure as shown above.

Furthermore, as featured in claim 23, a storage unit having a tendency matrix table that categorizes the transaction tendency is similar to a Hard Disk Drive (HDD) or a database containing a plurality of files representing consumers purchase history data related to the consumers purchases, wherein the consumers' purchases indicate the consumers' tendency to consume or purchase a particular product or product brand. Both Deaton and Jermyn explicitly or implicitly support the latter disclosure.

Thus, contrary to the Applicant's remarks, the above combination addresses the claimed limitations and the 103(a) Rejection is said to be proper.

Therefore, the Applicant's request for allowance or withdrawal of the last Office Action has been fully considered and respectfully denied in view of the foregoing response since the Applicant's arguments as herein presented are not plausible and thus, the current **Office Action has been made Final**.

DETAILED ACTION

Specification

Status of the claims

Claim 1-8, 23, 24, 30 and newly added claim 37 are currently pending in the Instant Application. Claim 1-8, 23, 24 and 30 are herein being examined on the merits, while claim 37 is being withdrawn from further consideration as discussed above.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by

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another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351 (a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8, 24 and 30 are rejected under 35 U.S.C. 102 (e) for being anticipated by Jermyn, U.S Patent 6, 026, 370.

As per claims 1-8, 24 and 30, Jermyn teaches a system for generating and mailing customized purchase incentives to selected customers based on the customers' prior purchase history accumulated, from a plurality of stores, over a long period of time and stored in a purchase history database. For a selected product category associated with a promotional theme (promotion introduction), the purchase history database is scanned or searched or analyzed to select a list or a group of qualified consumers who have bought (consumed) products (suitable to be replaced) in the same product category as a product (promotion product) featured in the promotional theme. In other words, each selected consumer's purchase transactions are analyzed to determine a profile, such as loyalty to a brand promoted in the promotional theme or to a competitor's brand or new to the selected product category. The consumer's profile is then used to customize a purchase incentive package or coupon related to a promotion product featured in the promotional theme, designed to keep, for example, a customer loyal to the promoted brand or cause a customer to switch to the promoted brand. The

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package or coupons or purchase incentives has imprinted thereon promotional themes or other materials to enhance the purchase incentives and the printed coupons are subsequently mailed to the selected customers or targeted consumers. In short, Jermyn teaches a system for storing consumers' transactions in a global purchase history database, selecting a product category for promotion (selecting a promotion product in a promoted product category), scanning the database for customers to determine consumers who have purchased items or products (suitable to be replaced) in the same category as the promoted product based on their stored prior purchase history. Subsequent to this determination, generating and mailing purchase incentives to the selected (targeted) consumers contingent upon the consumers prior purchase history (See abstract; cot. 1: 66 to cot. 3: 35; cot. 3: 66 to cot. 4: 5; cot. 6: 40 to cot. 8: 20).

In short, Jermyn discloses a system for providing a particular promotion to a plurality of customers based on their profile (purchase history and demographics). To do so, purchase transactions of many consumers, generally in different stores, are accumulated in a purchase history database over a long period of time and then used to generate customized incentive offers for selected consumers. For a selected product category, usually related to a promotional theme, the purchase history database is scanned to select consumers who have made purchases in the same product area as the selected product category. Then each selected consumer's purchase transactions are analyzed to determine a profile for the consumer, such as loyal to the Promoted brand, loyal to a competitive brand, or new to the selected product category or a purchaser or user of related products. The consumer profile is then used to customize a purchase incentive package generated for each consumer household. The package also includes other printed materials to enhance the purchase incentives (See abstract). Here, a product

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theme or the same particular promotion is being targeted at a plurality of customers based on each individual customer's product information or based on whether a targeted customer is loyal to the product brand featured in the theme or promotional or advertising message, loyal to a competitor's brand, new to the selected brand, etc., as read from each individual customer's profile or purchase history. **It should further be recognized here that the content of the particular promotion or theme related to a product (within a category of products) may vary based on whether or not a targeted customer is loyal to the promoted brand, loyal to a competitor's brand, new to the promoted brand or a user of related brands. Furthermore, a product (from a category or group of related products) or a product brand is featured in the theme or particular promotion, related to the promoted brand (product), and a customer is targeted based on his affinity to the product brand (product) promoted or featured in the particular promotion or theme (introductory sentence or promotional message) (fig. 3; col. 2: 13-22; col. 2:37 to col. 3: 37 to col. 4: 35).**

In general, Jermyn discloses a targeted incentive generation apparatus and related method for use with a sales transaction recording system having at least one checkout terminal and a store controller with access to an item price file. Briefly stated, the apparatus of the invention comprises means for identifying purchased items presented at a checkout terminal; **means for identifying consumers presenting items for purchase;** data storage means (database) at each store for holding items purchased by **each identifiable consumer;** a host computer capable of receiving records of items purchased from the data storage means in multiple stores; and a cumulative purchase transaction database associated with the host computer for holding a record of purchase transactions

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accumulated over a relatively long period of time. The host computer includes processing means for scanning (searching) the cumulative database to select consumer households (consumers) that have purchased products falling within defined product categories, means for profiling each selected consumer household (consumer) in terms of brand loyalty with respect to a promoted brand (promoted), means for generating incentives, associated with the same promoted brand (product), that differ based on the consumer household profile (simply consumer profile since only the consumer whose purchase history is recorded therein is being targeted here, but not the other members of the household), and means for printing the incentives for mailing to the selected consumer households (identified or targeted consumers). More specifically, the processing means within the host computer further includes means for merging with the generated incentives other textual and pictorial material that further enhances the customized purchase incentives directed to the identified consumers (col. 1: 66 to col. 2: 25).

Moreover, before printing and mailing of the incentive packages (block 92 of fig. 3), other mailing materials are merged with the incentives, as indicated in block 90. Ideally, these include descriptive text, photographic and other materials, combined into an attractive magazine format that highlights the theme (product description describing the promoted brand (product)) and presents the printed purchase incentives (coupons), having imprinted thereon the product description, to the targeted consumers. Typically, the incentive packages are designed for seasonable presentation, such as for summer food selections, holiday food selections, back-to-school supplies, and so forth. It should be understood here that individual product

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description (introductory sentence), related to the same promoted brand (product), is displayed on each customized purchase incentive or coupon provided to each targeted consumer from a plurality of targeted consumers targeted by the current promotion. In other words, the product description or text imprinted on a targeted consumer's customized purchase incentive includes, among other things, a unique coupon value such that a loyal consumer receives a modest discount to ensure continued brand loyalty, while providing a greater discount to encourage consumers using another competitor's brand to switch to the promoted brand (product). To this end, printing different coupon discount values on the coupons, based on whether or not a consumer is loyal to the promoted brand or loyal to a competitor's brand (product), by itself renders the product description unique. Hence, the printed product description, including the different discount coupon values, is said to be unique or customized for each individually targeted consumer, as one skilled in the art would have concluded (col. 7: 66 to col. 8: 8; col. 2: 65 to col. 3: 4).

Jermyn teaches a method comprising the steps of identifying items (suitable to be replaced) purchased by a plurality of consumers at a checkout, identifying individual consumers presenting items for purchase, recording sales transactions in a global consumer purchase database in association with the individual consumers who made them, selecting a product category (a product brand) for promotion, scanning (searching) the said database to select individual consumers who have purchased items related to the promoted product category (product brand), customizing or individualizing a purchase incentive, related to a promoted product in the promoted product category (product brand), for each selected consumer

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based on the selected consumer's profile read from the consumer's purchase history (indicating the selected consumer's tendency to consume or purchase a particular item or product brand) and distributing the customized incentives to the individual consumers. The method further comprising, before printing and mailing/distributing the individualized incentives, the final step of merging other materials with the individualized incentives, wherein these materials include descriptive text, photographic and other materials combined into an attractive magazine format highlighting the theme of the promoted product (product brand) (each individual consumer from a plurality of consumers receives an individual incentive, related to the same promoted product or product brand, having imprinted thereon unique promotional theme or product description or statement corresponding to the promoted product or product brand) (fig. 3; col. 2: 37 to col. 3: 11; col. 7: 66 to col. 8: 8).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deaton, US Patent 5,649,114 in view of Jermyn, US Patent 6,026,370.

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As per claim 23, Deaton et al teach, among other things a system for targeting customers based on factors such as demographics, recency, frequency, volume purchase data, timing of purchases or purchase cycle data, brand loyalty, coupon, redemption data and custom price sensitivity. These factors are used to develop coupon lists, associated with customers' transaction habits or tendencies, which are spooled to a coupon printer for delivery to the customers at the checkout register **or by mail**. Alternatively, the coupon lists may be spooled to an electronic medium, such as customers' smart cards, or a store's system controller mass storage device for automatic electronic redemption on a future bill (figs. 19-45).

Furthermore, Deaton et al teach a system for providing selective incentives to a customer or "transactor" if and only if the customer's or "transactor's" shopping history or transaction history or purchase history meets some predetermined criteria, such as demographics, recency, frequency, volume purchase data, timing of purchases or purchase cycle data, brand loyalty, coupon redemption data and custom price sensitivity data and infrequent purchase data, as set forth by a retailer. Upon analyzing the shopping history data or purchase history data using a program subroutine as disclosed in figs. 18 and 23-47 or any conventional data mining technique, a decision is made, subsequent to determining the customer's purchase habits or pattern or tendencies, on whether or not the said customer should receive a selective incentive and/or be targeted for a particular product promotion.

See Col. 1: 66 to Col. 2: 4; Col. 65: 61 to Col. 67: steps 40-46; Col. 68: 8-16;
Col:

71: 4 to Col. 72: 58.

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In addition, Deaton teaches a system wherein a customers' purchase history, such as

price sensitive data, volume purchase data, frequency of shopping data, brand loyalty data and so on, is used not only to target the customers by offering different categories of discount **coupons (coupon A, coupon M, standard coupon, echo coupon** etc) redeemable on particular promotional products to the said customers, but also to anticipate or predict what the customers will purchase next and prepare a specific promotional package to target these particular customers (cot. 71: 30-45 and steps 200-211; cot. 100: 64 to cot. 101: 13; cot. 101: 48 to cot. 103). Deaton, for example, clearly points out that transaction tendencies or patterns can be used to at least divide customers into two groups, that is customers who are price sensitive and those who are not. Based on this grouping, two different promotional messages regarding a particular promoted product will be generated. The customer who is price sensitive will receive a coupon with a higher value to encourage him to buy the promoted product while the other customer will receive a coupon with a lower value to buy the promoted product, as depicted in col. 93: step 272.

Deaton further discloses mailing purchase incentives to targeted customers as opposed to providing the purchase incentives to the customers at the POS in accordance with the customers' prior transaction history, stored in a database, depicting the usage by the customers of particular products, brand loyalty or the customers' tendencies to consume a certain type of products or brand (cot. 63: 33-42; col. 65: 20-24; col. 66: 1-21; cot. 70: 57-59). Finally, it is understood that the providing of the purchase incentives to the customers is based on the customers'

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prior shopping history, but not on a current transaction and that the current transaction is simply used to determine if it is time to reward the customers while their accounts are open at the POS, as would have concluded one having ordinary skill in the art.

In general, Deaton discloses mailing/distributing customized/individualized incentives, related to a particular promoted product or product brand, to individual customers based on the customers' purchase history, which indicates the customers' tendency to consume a particular item related to the promoted product or product brand (col. 71: 31-67; col. 72: 35-43).

Although Deaton implicitly or explicitly supports most of the claim limitations, however, Deaton does not expressly disclose a system for finding a product previously purchased by one or more customers, wherein the product is suitable to be replaced with a promotion product by comparing the specification of the product previously purchased to the specification of the promoted product (commodity) and for categorizing a customer's transaction tendency or trend or habit by purchasing speed and system type purchasing as read from the customer's past transaction data.

However, Jermyn teaches a system for generating and mailing customized purchase incentives to selected customers based on the customers' prior purchase history accumulated, from a plurality of stores, over a long period of time and stored in a purchase history database. For a selected product category associated with a promotional theme (promotion introduction), the purchase history database is scanned or searched or analyzed to select a list or a group of qualified consumers who have bought (consumed) products (suitable to be replaced) in the same product category as a product (promotion product) featured in the promotional theme. In other words, each selected consumer's purchase transactions are analyzed to determine a profile, such as loyalty to a brand promoted in the promotional theme or to a competitor's brand or new to the selected product category. The consumer's profile is then used to customize a purchase incentive package or coupon related to a promotion product featured in the promotional theme, designed to keep, for example, a customer loyal to the promoted brand or cause a customer to switch to the promoted brand. The package or coupons or purchase incentives has imprinted thereon promotional themes or other materials to enhance the purchase incentives and the printed coupons are subsequently mailed to the selected customers or targeted consumers. In short, Jermyn teaches a system for storing consumers' transactions in a global purchase history database, selecting a product category for promotion (selecting a promotion product in a promoted product category), scanning the database for customers to determine consumers who have purchased items or products (suitable to be replaced) in the same category as the promoted product based on their stored prior purchase history. Subsequent to this determination, generating and mailing purchase incentives to the selected (targeted) consumers contingent upon the

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consumers prior purchase history (See abstract; cot. 1: 66 to cot. 3: 35; cot. 3: 66 to cot. 4: 5; cot. 6: 40 to cot. 8: 20).

Jermyn discloses a system for providing a particular promotion to a plurality of customers based on their profile (purchase history and demographics). To do so, purchase transactions of many consumers, generally in different stores, are accumulated in a purchase history database over a long period of time and then used to generate customized incentive offers for selected consumers. For a selected product category, usually related to a promotional theme, the purchase history database is scanned to select consumers who have made purchases in the same product area as the selected product category. Then each selected consumer's purchase transactions are analyzed to determine a profile for the consumer, such as loyal to the Promoted brand, loyal to a competitive brand, or new to the selected product category or a purchaser or user of related products. The consumer profile is then used to customize a purchase incentive package generated for each consumer household. The package also includes other printed materials to enhance the purchase incentives (See abstract). Here, a product theme or the same particular promotion is being targeted at a plurality of customers based on each individual customer's product information or based on whether a targeted customer is loyal to the product brand featured in the theme or promotional or advertising message, loyal to a competitor's brand, new to the selected brand, etc., as read from each individual customer's profile or purchase history. **It should further be recognized here that the content of the particular promotion or theme related to a product (within a category of products) may vary based on whether or not a targeted customer is loyal to the promoted brand, loyal to a competitor's brand, new**

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to the promoted brand or a user of related brands. Furthermore, a product (from a category or group of related products) or a product brand is featured in the theme or particular promotion, related to the promoted brand (product), and a customer is targeted based on his affinity to the product brand (product) promoted or featured in the particular promotion or theme (introductory sentence or promotional message) (fig. 3; col. 2: 13-22; col. 2:37 to col. 3: 37 to col. 4: 35).

In general, Jermyn discloses a targeted incentive generation apparatus and related method for use with a sales transaction recording system having at least one checkout terminal and a store controller with access to an item price file. Briefly stated, the apparatus of the invention comprises means for identifying purchased items presented at a checkout terminal; **means for identifying consumers presenting items for purchase;** data storage means (database) at each store for holding items purchased by **each identifiable consumer;** a host computer capable of receiving records of items purchased from the data storage means in multiple stores; and a cumulative purchase transaction database associated with the host computer for holding a record of purchase transactions accumulated over a relatively long period of time. **The host computer includes processing means for scanning (searching) the cumulative database to select consumer households (consumers) that have purchased products falling within defined product categories, means for profiling each selected consumer household (consumer) in terms of brand loyalty with respect to a promoted brand (promoted), means for generating incentives, associated with the same promoted brand (product), that differ based on the consumer household profile (simply consumer profile since only the consumer whose purchase history is recorded therein is being**

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targeted here, but not the other members of the household), and means for printing the incentives for mailing to the selected consumer households (identified or targeted consumers). More specifically, the processing means within the host computer further includes means for merging with the generated incentives other textual and pictorial material that further enhances the customized purchase incentives directed to the identified consumers (col. 1: 66 to col. 2: 25).

Moreover, before printing and mailing of the incentive packages (block 92 of fig. 3), other mailing materials are merged with the incentives, as indicated in block 90. Ideally, these include descriptive text, photographic and other materials, combined into an attractive magazine format that highlights the theme (product description describing the promoted brand (product)) and presents the printed purchase incentives (coupons), having imprinted thereon the product description, to the targeted consumers. Typically, the incentive packages are designed for seasonable presentation, such as for summer food selections, holiday food selections, back-to-school supplies, and so forth. It should be understood here that individual product description (introductory sentence), related to the same promoted brand (product), is displayed on each customized purchase incentive or coupon provided to each targeted consumer from a plurality of targeted consumers targeted by the current promotion. In other words, the product description or text imprinted on a targeted consumer's customized purchase incentive includes, among other things, a unique coupon value such that a loyal consumer receives a modest discount to ensure continued brand loyalty, while providing a greater discount to encourage consumers using another competitor's brand to switch to the promoted brand (product). To

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this end, printing different coupon discount values on the coupons, based on whether or not a consumer is loyal to the promoted brand or loyal to a competitor's brand (product), by itself renders the product description unique. Hence, the printed product description, including the different discount coupon values, is said to be unique or customized for each individually targeted consumer, as one skilled in the art would have concluded (col. 7: 66 to col. 8: 8; col. 2: 65 to col. 3: 4).

Jermyn teaches a method comprising the steps of identifying items (suitable to be replaced) purchased by a plurality of consumers at a checkout, identifying individual consumers presenting items for purchase, recording sales transactions in a global consumer purchase database in association with the individual consumers who made them, selecting a product category (a product brand) for promotion, scanning (searching) the said database to select individual consumers who have purchased items related to the promoted product category (product brand), customizing or individualizing a purchase incentive, related to a promoted product in the promoted product category (product brand), for each selected consumer based on the selected consumer's profile read from the consumer's purchase history (indicating the selected consumer's tendency to consume or purchase a particular item or product brand) and distributing the customized incentives to the individual consumers. The method further comprising, before printing and mailing/distributing the individualized incentives, the final step of merging other materials with the individualized incentives, wherein these materials include descriptive text, photographic and other materials combined into an attractive magazine format highlighting the theme of the promoted product (product brand)

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(each individual consumer from a plurality of consumers receives an individual incentive, related to the same promoted product or product brand, having imprinted thereon unique promotional theme or product description or statement corresponding to the promoted product or product brand) (fig. 3; col. 2: 37 to col. 3: 11; col. 7: 66 to col. 8: 8).

Furthermore, it is well established in the art that purchase histories of a plurality of consumers, stored in a database, can be searched or scanned to determine, for instance, customers who have previously purchased a competitor's product brand, Ragu spaghetti sauce for example, wherein these customers are being incentivized to cause them to switch to another brand, such as Campbell's Prego sauce, sponsored by a different manufacturer or Campbell's.

Additionally, using a customer's past shopping transaction stored in a dealer's or retailer's database or information provided to a system manufacturer or distributor by the customer on a product or computer system registration form, a retailer or more specifically a computer distributor or manufacturer can target a specific customer based on his purchasing tendencies or transaction tendencies or habits, extracted from the retailer's database or system registration form, including, but not limited to, system speed (high-end, low-end or entry level, standard or mid-range), system type (brand's name, OEM or IBM compatible or clones or custom-built or built-to-order system), notebook or laptop, desktop (desktop case or tower case or housing), and so on. For example, many small entrepreneurs, involved in the sales of custom-built PCs, encourage their customers to trade in their old systems in an effort to boost new system sales, wherein the dollar values associated with the trade ins are used to discount or

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reduce the price of new systems, regardless of the source of the old or legacy systems. Subsequently, the old systems can be sold by the small entrepreneurs, as it or after an upgrade, to other customers in the USA or abroad, especially in Third World countries, in need for systems at discounted prices. Further, the old or legacy systems can be donated, as it or after an upgrade, to non-profit organizations by the small entrepreneurs, wherein the entrepreneurs can use the dollar values related to the donations of the old systems to reduce their business income tax. In the event the old or legacy systems (low performers) are not sold, they can be taken apart or salvaged and the various components can be used by the small entrepreneurs to conduct hands-on activities in PC Tech classes. PC Tech students sometimes have to buy these old components from third parties in order to practice the skills taught in training classes. Moreover, there are companies in the USA that are involved in the recycling of unwanted old computers by removing the silicon chips and other important chips useful in other electronic circuits, thereby preventing individual customers or corporations from dumping these old computers in the open field, which can create an environmental problem or crisis. Finally, Gateway 2000, a computer manufacturer, upon selling a new computer system to a customer promises or advertises that the customer can trade in this new system (later on low performer) in two years for a brand new and more powerful computer system using the dollar figure associated with the trade in to reduce the price of the new powerful system, thereby converting a one time customer into a loyal customer by maintaining a business relationship with the said customer while bringing him/her back to a Gateway Country store or Gateway website to complete the trade in and hence receive the new and more

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powerful computer system, subsequent to paying a balance due, as promised. ("Official Notice")

Therefore, an ordinary skilled artisan would have been motivated at the time of the invention to incorporate the above disclosures into Deaton's customized incentive system so as to include computer systems as products or commodities sold at participating retailers and suitable to be replaced or updated in the near future and record in a database, in a manner similar to recording other consumers' transaction data, a plurality of customers' transactions involving the purchases of the computer systems (low performers), wherein transaction data related to system speed (high-end, low-end or entry level, standard or mid-range), system type (brand's name, OEM or IBM compatible or clones or custom-built or built- to- order system), notebook or laptop, desktop (desktop case or tower case or housing) and date of purchases are recorded or stored in the database and used to further target the customers who have bought those systems (low performers) by providing the customers with a discount coupon on a newly promoted computer system (promoted product or high performer), based on the speed, type and purchase date of previously purchased computer systems, in an effort to boost sales of the new computer system while maintaining a good relationship (custom loyalty) with the customers by bringing them back to a participating retailer's store to redeem the coupon upon by purchasing the newly promoted system (better performer), thereby preventing the targeted customers from buying a similar or comparable system from a 'competitor, while encouraging them to patronize a participating store since the customers can only redeem the discount coupon at a participating or specific POS upon purchasing the brand new and more powerful system.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent 5,974,396 Anderson discloses a method of and a system for gathering and analyzing customer and purchasing information permits a retailer or retail chain to process transactional information involving large numbers of consumers and consumer products. Product information is gathered that uniquely identifies a specific product by type and manufacturer and grouped into generic product clusters. Consumers are similarly grouped into consumer clusters based on common consumer demographics and other characteristics. Consumer retail transactions are analyzed in terms of product and/or consumer clusters to determine relationships between the consumers and the products. Product, consumer, and transactional data are maintained in a relational database. Targeting of specific consumers with marketing and other promotional literature is based on consumer buying habits, needs, demographics, etc. A retailer queries the database using selected criteria, accumulates data from the database in response to that query, and makes prudent business and marketing decisions based on that response. Queried information from the database may be communicated to a printing subsystem for printing promotional literature directed to particular customers based on cluster information stored in the database (channel hub). See abstract; Col. 2: 24 to Col. 4: 60.

US Patent 5,459,306 to Stein a method and system for delivering product picks to a prospective individual user. Personal user information is gathered. Information on a

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user's use of a product during product use is gathered, correlated and stored. A user code provided to the user is correlated with the user information and the use information. The user information and the use information are classified based on use of the product. Classes of information potentially relevant to future purchases are identified. Product picks (promotions and recommendations) are delivered based on the classified information and the user information, responsive to an inquiry on behalf of the user.

USP 5,909,023 to Ono discloses an online shopping support method and system capable of supplying proper matching user specific needs and conditions. Purchase history information of each good purchased by each user is stored at a service offering system. In response to an input of identification information from a service use system, the service offering system searches the information of the user corresponding to a user identifier and calculates a purchase interval of each purchased by the user. The service offering system judges, for each good whose purchase interval was calculated, whether the time corresponding to the purchase interval has lapsed after the latest purchase day. The service offering system transmits information of the good whose time corresponding to the purchase interval has lapsed to the service use system via a communication network and displaying the information at the service use system.

USP 5,870,716A to Sugiyama discloses a shopping system that includes store terminals for registering purchase and sale of items, a store processor for collectively managing the store terminals, electronic shelf labels capable of setting classification, etc.,

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of the items, an item information database for storing the classification of the items

(See abstract)

USP 6,470,323 to Suzuki relates to a goods sales management system, which communicates directly to customers via a communication line. The system manages the transmitting of merchandising notices for the goods to selected customers based on an arrival of goods that will satisfy a previous unsatisfied customer request and based on a customer purchase history. The system includes a customer utilization history memory storing history information indicating the use of the goods sales management apparatus by customers and customer information, a customer extracting process selecting customers to whom the merchandising notices are transmitted on the basis of the utilization history information in the customer utilization history memory and a merchandising notice sending process transmitting the merchandising notices to the customers selected (See abstract).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication from the Examiner should be directed to Jean D. Janvier, whose telephone number is (571) 272-6719. The aforementioned can normally be reached Monday-Thursday from 10:00AM to 6:00 PM EST. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Mr. Eric W. Stamber, can be reached at (571) 272- 6724.

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JDJ

12/04/07

JEAN D. JANVIER
PRIMARY EXAMINER
Jean D. Janvier